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No. 87-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

RONALD S. MONROE,

Petitioner,

v.

HILTON BUTLER,
WARDEN, LOUISIANA STATE PENITENTIARY,
ANGOLA, LOUISIANA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, LOUISIANA

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QUESTIONS PRESENTED

After the federal courts in this capital case found that Louisiana had violated *Brady v. Maryland*, 373 U.S. 83 (1963) by suppressing substantial evidence that another man had committed the crime for which petitioner was convicted, the state courts found the contrary. These facts raise two questions:

1. When a federal court has found after a full and fair evidentiary hearing that the State's post-conviction suppression of material exculpatory evidence violates a petitioner's *Brady* rights, are the state courts, in determining the remedy for this violation, bound to give effect to that federal court's determination of a federal question under federal doctrines of collateral estoppel?

2. When a federal court issues a writ of habeas corpus because of the State's post-conviction suppression of material exculpatory evidence in violation of a petitioner's *Brady* rights and remands petitioner to state court to request post-conviction relief which comports with his constitutional rights, are the state courts required to grant petitioner a new trial or release him -- until now the invariable remedy for a prosecutorial suppression of material exculpatory evidence?

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Petitioner Ronald S. Monroe respectfully prays that a writ of certiorari issue to review the order of the Criminal District Court for the Parish of Orleans denying his federal constitutional challenges to the sentence of death imposed upon him by the State of Louisiana.

Petitioner is under sentence of death in the Louisiana State Penitentiary at Angola, Louisiana pursuant to a judgment of conviction of murder in the first degree. An order of the Criminal District Court has stayed petitioner's execution pending his timely filing of this petition for certiorari and its final disposition.

OPINIONS BELOW

The unreported opinion of February 2, 1987 of the Criminal District Court on the Application for Post-Conviction Relief or, in the Alternative, Motion for a New Trial ("Application and Motion") is annexed hereto as Appendix A. The unreported Memorandum Decision and Order 1987 of the Louisiana Supreme Court, filed on September 21, denying the application for a supervisory writ is annexed hereto as Appendix B. The unreported decision of the United States District Court for the Eastern District of Louisiana, filed on February 29, 1984, which found a *Brady* violation and which, petitioner argues, should have been given collateral estoppel effect, is annexed hereto as Appendix C. The Findings and Conclusions of United States Magistrate Marcel Livaudais, which was adopted by the District Court, is annexed hereto as Appendix D.

JURISDICTION

The decision of the Louisiana Supreme Court denying petitioner's application for a supervisory writ was entered on September 21, 1987. On November 3, 1987 Justice Byron White signed an order extending through December 20, 1987 petitioner's time to file this petition for certiorari. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article III, Section 1 to the Constitution of the United States provides, in relevant part: "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

2. Article III, Section 2 to the Constitution of the United States provides, in relevant part: "The judicial Power shall

extend to all Cases, in Law and Equity, arising under this Constitution, [and] the Laws of the United States . . . . . [and] to Controversies . . . ."

3. Article VI to the Constitution of the United States provides, in relevant part: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

4. Amendment XIV, Section 1 to the Constitution of the United States provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

5. Title 28, Section 1738 of the United States Code, entitled "Judicial Code and Judiciary," revised, codified and enacted into positive law by Act of June 25, 1948, c. 646, Section 1, 62 Stat. 869 provides, in relevant part: "The records and judicial proceedings of any court of any . . . State, Territory or Possession [of the United States], or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF THE CASE

The Crime and the Conviction

In the early morning of September 10, 1977, an intruder murdered Lenora Collins in her New Orleans home by stab-

bing her in the chest and neck. An hour later, Ronald Monroe, a neighbor with no criminal record, was arrested at home for the crime.

The only evidence linking Monroe to the crime was an identification by the victim's two pre-teenaged children, Theodise and Joseph. No physical evidence, such as finger prints, footprints, a murder weapon or blood samples impli cated Monroe. He has consistently maintained his innocence.

On January 23, 1980, Monroe was convicted of the first degree murder of Lenora Collins and sentenced to death. 1/ His direct appeal was denied. *State v. Monroe*, 397 So.2d 1258 (La. 1981), *cert. denied*, 463 U.S. 1229 (1983).

The Suppression of Material, Exculpatory Evidence

It is undisputed that less than nine months after petitioner's conviction, the New Orleans police were told by Michigan authorities that another man, George Stinson, the former husband of Lenora Collins, had confessed to the crime for which Monroe had been sentenced to die. The police never revealed that information to petitioner or his counsel.

The details of the suppression are as follows: In July 1980 George Stinson murdered his common-law wife Erma Jean Lofton in Pontiac, Michigan by stabbing her in the chest and neck. While investigating the Lofton murder in July 1980, Detective Joseph Gallardo of the Pontiac, Michigan Police Department received information indicating that Stinson had stabbed to death his previous wife in New Orleans -- Lenora Collins. Gallardo telephoned the New Orleans Police Department ("NOPD") to convey this information. The NOPD asked no questions and passed the information on to no one else.

1/ The Louisiana Supreme Court had reversed a previous conviction on appeal. State v. Monroe, 366 So. 2d 1345 (La. 1978).

Shortly thereafter, Gallardo learned that Stinson had apparently confessed to stabbing Collins to death. Stinson had described the Lofton killing to his cellmate, Francis Lee McWilliams, and then told McWilliams that the "same thing happened" to Collins. McWilliams reported Stinson's account of the Lofton and Collins killings to Detective Gallardo. On September 23, 1980, Gallardo again called up the NOPD.

Gallardo spoke to Sergeant John McKenzie of the NOPD. Sergeant McKenzie made detailed and contemporaneous notes of his conversation with Gallardo. These notes state in pertinent part:

> While in jail, Stinson got to bragging about how he had murdered wife in Michigan to cell mate.
>
> Stinson also bragged that he had killed his first wife in New Orleans on 9/10/77 and threatened his stepchildren into identifying neighbor as killer . . . .
>
> Det. Gallardo also got information from a second source that Stinson had killed New Orleans wife Collins.

(Appendix D at 110.)

The State admitted below that it never disclosed to Monroe or his counsel the information conveyed by Detective Gallardo to the NOPD and Sergeant McKenzie. (*See* Appendix D.) Monroe's counsel learned of the Stinson material, and its suppression by the State, only in late 1983 and then only by a fluke.

Post-Conviction Proceedings in the State Courts -- First Time Around

On December 27, 1983, Monroe filed a Motion for a New Trial or, in the Alternative, Post-Conviction Relief, in the

Criminal District Court for the Parish of Orleans. Monroe also sought a stay of his execution, then scheduled for just after midnight on January 4, 1984. Monroe alleged, inter alia, that Stinson had admitted the Collins murder and that the New Orleans police had violated Monroe's constitutional rights under *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to disclose the information to Monroe or his counsel as soon as it came to their attention.

Monroe presented to the Criminal District Court all the facts concerning the suppression which were later presented to the federal court in Monroe's federal habeas corpus petition, except for the McKenzie notes. Defense counsel did not yet know of their existence. The State's attorneys -- who vigorously objected to Monroe's request for discovery and an evidentiary hearing -- apparently never bothered to check the NOPD file on the Collins murder, where the McKenzie notes were lying, gathering dust.

On January 3, 1984, the Criminal District Court refused to hold an evidentiary hearing or sign subpoenas for the Michigan witnesses who could provide testimony in support of Monroe's *Brady* claim. It dismissed the proceeding and denied the motion for a stay of execution. The Louisiana Supreme Court affirmed that ruling by a five-to-two vote later that evening.

The Federal Habeas Petition

On December 30, 1983, Monroe filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Louisiana. The district court, after giving considerable deference to the state court proceedings, stayed Monroe's execution on January 4, 1984, only eight hours before it was scheduled to take place. The district court first found that Monroe had exhausted his state court remedies and then ordered an evidentiary hearing before a United States

Magistrate to determine whether the State had withheld material, exculpatory evidence from Monroe in violation of *Brady v. Maryland*.

The Federal Evidentiary Hearing

In response to a subpoena duces tecum issued in connection with this hearing, the State in mid-January 1984 finally produced to defense counsel the McKenzie notes.

A full and fair evidentiary hearing was held before Magistrate (now federal Judge) Livaudais on January 30, 1984. Stinson and Gallardo both testified. (see Appendix D.)

Three days after the hearing, Magistrate Livaudais determined that Monroe's Brady claim had merit and recommended that a writ of habeas corpus be granted. (Appendix D at 8d.) Magistrate Livaudais found each of the three elements of a Brady violation present. First, the Magistrate found it "undisputed that state authorities suppressed the evidence concerning George Stinson that they received from Detective Gallardo," and that they never conveyed it to Monroe or his counsel. (Appendix D at 6d.) Second, the Magistrate found the suppressed evidence favorable to Monroe. In the Magistrate's words: "It is hard to imagine evidence more potentially favorable to a defendant than the possibility that another person's confession to the crime for which he has been convicted coupled with a suggestion of a second source of information in support." (Appendix D at 7d.) Finally, the Magistrate found that the suppressed evidence "creates a reasonable doubt that did not otherwise exist." He added:

> A parallelism between the Michigan and New Orleans murders was shown. In each Stinson was the husband, in each a possible motive may have been the wife's apparent disaffection, in each a stabbing and in each a suggestion of witness intimidation.

(Appendix D at 7d.)

The District Court's Issuance of the Writ

On February 15, 1984, the district court accepted the Magistrate's findings and conclusions and granted a writ of habeas corpus. In a "Memorandum Opinion" of February 29, 1984, the district court, on a de novo review of the record, adopted the Magistrate's report as its own findings and conclusions. (Appendix C.) The district court held that the State had violated Monroe's Brady rights.

The District Court issued its Memorandum Opinion with the express purpose of "address[ing] the [State's] objection to the [Magistrate's] report." (Appendix C at 1c.)

The State had contended that, despite *Brady*, it was "under no duty to give a defendant exculpatory evidence which was obtained after the defendant was convicted." (Appendix C at 2c.) (Emphasis added.) The district court explicitly rejected this contention and found a *Brady* violation. The court held "that it is fundamentally unfair and contrary to society's notion of justice for a prosecutor to withhold material exculpatory evidence which he acquires while the defendant is entitled to file a motion for a new trial." (Appendix C at 3c.)

The State had contended that the Stinson material "was not credible and does not rise to the level of *Brady* material . . . ." (Appendix C at 3c.) The district court explicitly rejected this contention as "without merit." (Appendix C at 3c.) Rather, the district court noted that Stinson admitted at the evidentiary hearing that he had said "that [Lenora Collins] was killed the same way Erma Lofton was," and the district court found that "this statement could be viewed by a trier of fact as a confession which would by logical necessity exculpate Monroe." (Appendix C at 4c.)

Having found a *Brady* violation and having granted a writ of habeas corpus, the district court remitted Monroe to the

state courts to obtain post-conviction relief which comported with his constitutional rights.

On February 15, 1984 Monroe moved the district court to amend the judgment insofar as it failed to direct his release from custody unless the State granted him a new trial. At oral argument on April 25, 1984, the district court denied the motion.

The Fifth Circuit Decision and the Denial of Certiorari

Monroe appealed to the United States Court of Appeals for the Fifth Circuit from that part of the judgment which did not direct his release from custody unless the State granted him a new trial. The State did not cross appeal -- failing to challenge the district court's decision that the *Brady* principles apply to post-conviction suppression or that the suppressed evidence here was material. The Fifth Circuit affirmed the district court's ruling, *Monroe v. Blackburn*, 748 F.2d 958 (5th Cir. 1984) and this Court, with Justices Brennan and Marshall dissenting, denied certiorari. *Monroe v. Blackburn*, 106 S. Ct. 2261 (1986). In his dissent, Justice Marshall pointed out that, upon a finding of a *Brady* violation, "The only way this right can be guaranteed is to grant petitioner the remedy that until now has always followed a determination that the *Brady* rule has been violated: He must be released or retried." Id. at 2265 (Marshall, J., dissenting).

Post-Conviction Proceedings in the State Courts -- Second Time Around

Monroe returned to the Criminal District Court for the Parish of Orleans, on November 7, 1986, filing for the second time an Application for Post-Conviction Release or, in the Alternative, a Motion for a New Trial ("Application and Motion"). Before the same judge who had denied his first Application and Motion, Monroe argued that the Criminal District

Court should grant a new trial as the remedy for the Brady violation found by the federal courts. In support of his Application and Motion, Monroe submitted the transcript of the federal hearing.

The Criminal District Court denied the Application and Motion on February 2, 1987. The court held, in direct contradiction to the prior determination of the federal court, that *Brady* did not apply to a suppression of exculpa tory evidence after conviction. The court also held, again in direct contradiction to the prior determination of the federal court, that the suppressed Stinson statement was "merely an observation," and an "off-hand remark" which was not a confession. Indeed, the court reached a result nearly identical to the one it had reached three years earlier -- before the federal evidentiary hearing and the federal judgment. It was as if the federal court had never ruled.

On March 13, 1987 Monroe applied to the Louisiana Supreme Court to issue a supervisory writ to review the Order of the Criminal District Court and order that court to grant Monroe a new trial, but on September 21, 1987, the Louisiana Supreme Court, over two dissents, denied the application. Soon thereafter the Criminal District Court issued a stay of execution pending review by this Court.

Monroe now seeks review in this Court because the Louisiana state courts improperly disregarded the factual and legal holdings of the federal courts and failed to grant him a new trial to remedy the violation of his *Brady* rights.

REASONS FOR GRANTING THE WRIT

I

THIS COURT SHOULD GRANT THE WRIT TO CLARIFY THE REQUIREMENT, IGNORED ENTIRELY BY LOUISIANA, THAT STATE COURTS GIVE COLLATERAL ESTOPPEL EFFECT TO PRIOR DETERMINATIONS OF FEDERAL QUESTIONS BY FEDERAL COURTS

Faced with the exact same issues decided by the federal court between the same parties, the state court here utterly ignored the federal court's judgment, including its conclusions of law and findings of fact made after a full and fair evidentiary hearing. In ignoring that judgment, the state court failed to accord the federal ruling any collateral estoppel effect, without so much as mentioning the reasons for failing to do so. The state court never even alluded to the possibility that it was bound by what the federal court had done. This case thus presents the important issue of whether a state court is bound to give effect to a federal court's determination of federal questions under federal principles of collateral estoppel.

A. Federal Collateral Estoppel Binds State Courts [2/]

The principle is clearly established that a state court must give federal collateral estoppel effect to an earlier federal court's decision of a federal question. That is the holding of

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2/ As a preliminary matter, there can be no doubt that the issue of whether a state court must give collateral estoppel effect under federal law to a federal court's prior federal question judgment is itself a federal question, giving this Court jurisdiction under 28 U.S.C. § 1257(3). *Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 362 (1984); *Stoll v. Gottlieb*, 305 U.S. 165, 167 (1938); *Deposit Bank v. Frankfort*, 191 U.S. 499, 515 (1903).

Limbach v. Hooven & Allison Co., 466 U.S. 353 (1984). In a dispute before state courts between a taxpayer and state tax authorities over the disallowance of a deduction, the taxpayer relied upon an earlier decision of this Court -- *Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652 (1949) (*"Hooven I"*) -- a case involving the same tax, the same parties and similar property. The *Limbach* court soundly

rejected the taxpayer's argument that "*state*-law principles of collateral estoppel" applied. Id. at 361 (emphasis supplied). The *Limbach* court said that it was "concerned with federal issues and a contention that a state court disregarded a federal constitutional ruling of this Court" id. at 362, and stated:

> We reject the suggestion that we are confronted, in the present posture of the case, with a claim of collateral estoppel under state, as distinguished from federal, law. *Hooven I* was a decision concerned with the application and impact of the Import-Export clause upon the Ohio tax. The issue, thus, was one of a federal constitutional barrier. The Supreme Court of Ohio certainly so viewed it. . . . And it viewed collateral estoppel in the light of precepts set forth in . . . a federal . . . case.

Id. at 361. Federal and state courts are not in dispute about what the rule is. Recent federal courts which have addressed the issue, albeit in dicta, have set forth the same proposi tion as in *Limbach* that a state court must give federal collateral estoppel effect to a federal court's federal question judgment. *E.g.*, *Seven Elves, Inc. v. Eskenazi*, 704 F.2d 241, 244 n.2 (5th Cir. 1983) ("[S]tate courts generally are required to follow

federal rules in deciding the preclu sive effect of a prior federal question judgement of a federal court."). [3/] State courts, which have actually decided the issue, have agreed that federal law governs the collateral estoppel effect of a federal court's judgment in a subsequent state court action. E.g., *International Brotherhood of Electrical Workers* v. *Hawaiian Telephone Company*, 713 P.2d 943, 955 n.17 (Hawaii 1986); *Edwards v. First Federal Saving & Loan Association of Clovis*, 696 P.2d 484, 490-492 (N.M. App. 1985). [4/]

In short, this Court as well as lower federal courts and state courts have been nearly unanimous in accepting the principle that a federal court's federal question judgment binds a later state court under federal collateral estoppel rules -- a principle which the state court here ignored and defied.

[3/] Other such federal court decisions are *Sullivan v. First Affiliated Securities, Inc.*, 813 F.2d 1368, 1376 (9th Cir.), *cert. denied*, 108 S. Ct. 150 (1987) ("The res judicata impact of a federal judgment is a question of federal law which a state court is bound to apply . . . ."); Gelb v. *Royal Globe Insurance Company* , 798 F.2d 38 (2nd Cir. 1986) *cert. denied*, 107 S. Ct. 167 (1987) ("A state court must apply federal law to determine the preclusive effect of a prior federal question judgment."); *Travellers Indemnity Company v. Sarkisian*, 794 F.2d 754, 761 n.8 (2nd Cir.) *cert. denied* 107 S. Ct. 277 (1986) ("However, if Brown's case had been remanded to state court, the res judicata effect of the prior federal question suit would still have been governed by federal law.").

[4/] Other such state court decisions are *Hays v. Louisiana Dock Company*, 452 N.E.2d 1383, 1388-1389 (Ill. App. 5 Dist. 1983); *Anderson v. Phoenix Investment Counsel of Boston, Inc.*, 440 N.E.2d 1164, 1167 (Mass. 1982); *Bardo v. Commonwealth Department of Public Welfare*, 397 A.2d 1305, 1307 n.1 (Pa. 1979); *Levy v. Cohen*, 561 P.2d 252, 257 (Cal.), *cert. denied*, 434 U.S. 833 (1977); *Martin v. Martin*, 470 P.2d 662, 666, 670 (Cal. 1970).

B. Federal Collateral Estoppel Applies as a Consequence of the Judicial Power in Article III, the Supremacy Clause in Article VI, and the Principles of Full Faith and Credit

The requirement that a federal court's federal question judgment subsequently binds a state court pursuant to federal rules of collateral estoppel finds support not only in near unanimous precedent, but also in unassailable legal reasoning. It is grounded in the authority of federal courts under Article III of the Constitution. An essential element of the authority of any court, including a federal court, is the principle of finality, and that principle demands that the rules of collateral estoppel apply to a federal judgment. *Hardy v. Johns-Manville Sales Corporation* , 681 F.2d 334, 337 (5th Cir. 1982); *Restatement (Second)- Judgments* § 87 (1982). *See also Delaware Valley Citizens' Council for Clean Air v. Commonwealth of Pennsylvania*, 755 F.2d 38, 46 (3rd Cir.) (Stern, District Judge, concurring) ("Since 1792, finality of judgments has been recognized as an essential attribute of this federal judicial power to render decisions."), *cert. denied*, 474 U.S. 819 (1985) Thus, federal collateral estoppel is necessary for preserving the power of federal courts to render final judgments.

The principle that federal rules of collateral estoppel are inherent to a federal court's power to render final judgments arises from the "judicial power" of federal courts to decide certain "cases" and "controversies." U.S. Constitution, article III, § 1, 2. The principle is clearly articulated in a widely cited article by Professor Ronan E. Degnan:

> At its root is the constitutional provision that the federal judicial power extends only to cases and controversies. To decide a case or controversy implies some binding effect. A judgment or decree that lacks finality would constitute something other than an exercise of the judicial power. If that principle be accepted (and it has rarely been denied), it seems inappropriate that some other sovereignty -- the states -- should have ultimate authority to determine what binding effect the judgment has and on whom.
>
> . . . The ultimate reason for this conclusion is that it is in the nature of the judicial power to determine its own boundaries.

Degnan, *Federalized Res Judicata*, 85 Yale L.J. 741, 768-769 (1976) (footnote omitted) (emphasis in original). See also *Embry v. Palmer*, 107 U.S. 3, 9-10 (1882).

The ultimate source for binding state courts to the federal collateral estoppel effect required by Article III is the Supremacy Clause. U.S. Constitution, Article VI. *See Sullivan v. First Affiliated Securities, Inc.*, 813 F.2d 1368, 1376 (9th Cir.), *cert. denied*, 98 L.Ed.2d 106 (1987) (a state court is bound to apply federal rules of res judicata to an earlier federal judgment under the Supremacy Clause); *Delaware Valley Citizens' Council for Clean Air v. Commonwealth of Pennsylvania*, 755 F.2d 38, 46 (3rd Cir.) (Stern, District Judge, concurring) ("By command of the supremacy clause, judges in every state are bound by these statutes [enacted to implement the jurisdiction of the Supreme Court and of the lower federal courts], which in turn give to the federal courts the power to render unassailable final judgments."), *cert. denied*, 474 U.S. 819 (1985) ; 18 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 4462 at 649 (1981).

Binding state courts to earlier federal question judgments also sounds in full faith and credit. Whether rooted in the statute implementing the Full Faith and Credit Clause, 28 U.S.C § 1738, or judicial rule, this Court has regularly referred to the principle that "the judicial proceedings of the federal courts . . . must be accorded the same full faith and credit by state courts as would be required in respect of the

judicial proceedings of another state." *Supreme Lodge, Knights of Pythias v. Meyer*, 265 U.S. 30, 33 (1924). *See also Stoll v. Gottlieb*, 305 U.S. 165, 170–171 (1938); *Myers v. International Trust Company*, 263 U.S. 64, 69 (1923). *See generally Delaware Valley Citizens' Council for Clean Air v. Commonwealth of Pennsylvania*, 755 F.2d 38, 43–44 (3rd Cir.), *cert. denied*, 474 U.S. 819 (1985); *Levy v. Cohen*, 561 P.2d 252, 257 (Cal.) ("Full faith and credit must be given to a final order or judgment of a federal court."), *cert. denied*, 434 U.S. 833 (1977) ; Restatement (Second)–Judgments, § 87 (1981) ("It has long been established that the judgments of the federal courts are to be accorded full faith and credit when a question of their recognition arises in a state court . . . .").

The principle that the judgment of a federal court be accorded full faith and credit in a state court is "indispensable to federalism," complementing the Full Faith and Credit Clause and the explicit language of its implementing statute 28 U.S.C. § 1738. Degnan, *Federalized Res Judicata*, 85 Yale L.J. 741, 749 (1976). See also 18 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction, § 4468 at 648–649 (1981) ("It would be unthinkable to suggest that state courts should be free to disregard the judgments of federal courts, given the basic requirements that state courts honor the judgments of courts in other states and that federal courts must honor state court judgments."). In the words of this Court:

> Any other conclusion strikes down the very foundation of the doctrine of *res judicata*, and permits the state to deprive a party of the benefit of its most important principle, and is a virtual abandonment of the final power of the federal courts to protect all who come before them relying upon rights guaranteed by the Federal Constitution and established by the judgments of the Federal courts.

Deposit Bank v. Frankfort, 191 U.S. 499, 520 (1903).

Here, Monroe's rights under the federal constitution were guaranteed and protected by a judgment of a federal court. The state court, which had been entrusted with determining the appropriate remedy for the violation of Monroe's constitutional rights, took a step backwards. Instead of providing the *remedy*, it simply announced that there had been *no violation* of constitutional rights in the first place. Thus, the state court closed its eyes to the federal judgment and trampled on the finality of a federal court's judgment; it deliberately made rulings of law and fact directly contrary to the federal court's. The state court failed to utter a word in support of these rulings -- however contrary to both precedent and logic. Because the principles of federal collateral estoppel are of such funda mental importance, this Court should grant certiorari to correct Louisiana's blatant disregard of them.

C. Collateral Estoppel Applies to the Law and Facts Here

If the state court had adhered to the rules of federal collateral estoppel -- as it was required to do -- it could not have reached the result it reached.

Under federal law, three elements are necessary for applying collateral estoppel:

> (1) the issue at stake must be identical to that involved in the prior litigation;
>
> (2) the issue in the prior litigation must have been actually litigated; and
>
> (3) the determination of the issue in the prior litigation must have been necessary and essential to the prior judgment.

Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.5 (1979). *See also Freeman v. Lester Coggins Trucking, Inc.*, 771 F.2d 860, 862 (5th Cir. 1985); *Seven Elves, Inc. v. Eskenazi*, 704 F.2d 241, 244 (5th Cir. 1983).

Here all three elements are present. The issue of whether there was a *Brady* violation was precisely the same before the federal and state court; the issue was actually litigated in the federal court; and the finding of a Brady violation was a critical and necessary part of the federal court's judgment. In fact, the application of collateral estoppel is even more obvious here than usual, for the parties are precisely the same. Moreover, the exact same legal issues litigated before the federal court reappeared before the state court in the continuation of the same legal dispute.

Collateral estoppel applies not only to the federal court's ultimate holding that there was a *Brady* violation but also to its constituent findings of law and fact in support of that holding, namely that the newly discovered evidence was exculpatory, material and suppressed. The state court, however, ignored and defied each of these underlying findings.

The state court ignored and defied the federal court's legal holding on suppression. [5/] The state court

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5/ Although collateral estoppel does not apply to "unmixed questions of laws" arising in "successive actions involving unrelated subject matter," *Montana v. United States*, 440 U.S. 147, 162 (1979), collateral estoppel "is appropriate if" -- as here -- "both the first and second action involve application of the same principles of laws to an historic fact setting that was completed by the time of the first adjudication." 18 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 4425 at 243 (1981). *See also id.* at 253 ("Preclusion ordinarily should apply if two cases present the same issue of law application.")

The above simply expresses the approach taken by this Court in *United States v. Stauffer Chemical Company*, 464 U.S. 165 (1984). (Continued)

wrote that "it is impossible to accuse the prosecution of 'suppressing' [the alleged confession of Stinson] since it did not exist at the time of trial and therefore could not have been suppressed." (Appendix A at 2a.) But the federal Magistrate had already ruled:

> It is undisputed that State authorities suppressed the evidence concerning George Stinson that they received from Detective Gallardo. [The State] has admitted that

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(Continued)

There Stauffer sued the Environmental Protection Agency ("EPA") separately within the Tenth Circuit and the Sixth Circuit for inspections by private contractors of Stauffer plants in Wyoming and Tennessee, respectively. The Tenth Circuit agreed with Stauffer that inspections by "authorized representatives" of the EPA pursuant to the Clean Air Act did not include private contractors; then the Sixth Circuit reached the same result on the basis, inter alia, of issue preclusion; and this Court affirmed. This Court found that issue preclusion should apply as to the legal holding since there was a "close alignment of time and subject matter" between the actions, the actions arose "from virtually identical facts," and "any factual differences . . . are of no legal significance whatever. . . ." Id. at 172. Of course the reasons for applying collateral estoppel to the legal holding here is even stronger than in *Stauffer Chemical Corp.* since the actions arise from identical facts in the same controversy. *See also United States v. Moser*, 266 U.S. 236, 242 (1924) ("But a fact, question or right distinctly adjudged in the original action cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous view or by an erroneous application of the laws. That would be to affirm the principle in respect of the thing adjudged but, at the same time, deny it all efficacy by sustaining a challenge to the grounds upon which the judgment was based.") (emphasis in original); *Segal v. American Telephone & Telegraph Corp.*, 606 F.2d 842, 844-845 (9th Cir. 1979) ("Issue preclusion . . . forecloses litigation only of those issues of fact and *law* that were actually decided by a valid judgment between the partners, whether on the same or a different claim.") (emphasis added).

> neither Ronald Monroe, his attorneys nor anyone acting on Monroe's behalf was ever informed by anyone acting on behalf of the State of any of this information.

(Appendix D at 6d.)

The state court then went on explicitly to hold "that the Stinson statement cannot be deemed Brady material because it *did not even exist* at the time of Monroe's trial." (Appendix A at 2a) (emphasis in the original). But the

federal district court had addressed this very issue in some detail:

> [The State] contend[s] that the State is under no duty to give a defendant exculpatory evidence which was obtained after the defendant was convicted. In granting petitioner's request for a stay of execution, the Court held that the duty to disclose exculpatory material continues beyond the trial of a criminal case up to and including the time that an accused may apply for a new trial. . . . [The State's argument to the contrary] exalts form over substance and is without merit. The *Brady* cases stand for the proposition that due process is denied because the trial is fundamentally unfair when the prosecution fails to give the defendant exculpatory evidence that is material to an accused's guilt or innocence. These cases turn on the belief that society benefits when our system of criminal justice is fair, and rejects the sporting notion of justice. . . . [I]t is fundamentally unfair and contrary to society's notions of justice for a prosecutor to withhold material exculpatory evidence which he acquires while the defendant is entitled to file a motion for a new trial.

(Appendix C at 2c-3c.)

To allow the state court to retry the legal issue of post-conviction suppression would be particularly outrageous because the State had the opportunity to appeal the federal district court's holding on that issue to the Fifth Circuit but chose not to do so. The State should not be allowed to reargue in the state court the very point it lost on and chose not to appeal in the federal courts.

In short, the federal court held that there was "constitutional infirmity because material exculpatory matter bearing on Monroe's guilt or innocence was *suppressed*." (Appendix C at 7c) (emphasis added). The state court was collaterally estopped from reopening the federal court's suppression holding and was duty-bound to adhere to it.

The state court also ignored and defied the federal court's factual findings on the exculpatory and material nature of the new evidence.

The state court held "that the ambiguous utterance by Stinson that Ms. Collins died in a manner similar to the demise of Erma Jean Lofton, Stinson's common-law wife in Michigan, was merely an observation that both women coinci dentally died as a result of being stabbed." (Appendix A at 3a) In reaching this holding, the state court completely ignored the federal court's finding that this statement was both exculpatory and material.

The federal Magistrate stated:

> It is hard to imagine evidence more potentially favor able to a defendant than the possibility of another person's confession to the crime for which he has been convicted coupled with a suggestion of a second source of information in support.

(Appendix D at 7d.)

The federal district court stated:

> In light of the Court's careful evaluation of the record, the fact that Stinson made a statement that could be reasonably construed as a confession leads this Court to find that this evidence creates a reasonable doubt as to Monroe's guilt that did not previously exist.

(Appendix C at 5c.) [6/]

[6/] In fact, the state court ignored and defied the federal court at almost every turn.

The state court found that the Stinson material would not "have injected a doubt in the jury's mind" in light "of the overwhelming, eyewitness evidence of Monroe's murder of Ms. Collins, provided by the victim's two children. . . ." But the federal district court found that "the eyewitness testimony of the victim's two children" was marred by "disturbing" aspects:

> Although this testimony would seem to clearly establish Monroe's guilt, the Court is disturbed by many aspects of their testimony . . . Detective Gallardo's testimony at the evidentiary [hearing] concerning the facts surrounding the allegations that Stinson intimidated witnesses in Michigan, as well as the Bridges testimony concerning the possibility that the children may have been coerced, supports the Court's concern that the children's testimony should be weighed against the exculpatory evidence.

(Appendix C at 5c.)

The state court also found that Collins was not separating from Stinson when she died, that "no animosity [existed] between the two," and that the Lofton murder is irrelevant to understanding the Collins murder. But, after hearing all the evidence, the federal Magistrate found "a parallelism between the Michigan and New Orleans murders":

> In each Stinson was the husband, in each a possible motive may

In simply ignoring the federal court's findings of fact, the state court surely did not do what the federal court expected, which was to give due countenance to the evidence which bears materially on Monroe's innocence. The state courts are bound to give effect to the federal court's relevant findings of fact and conclusion of federal law. A state court is not free to decide -- as the state court did here -- that the evidence is not material enough to grant a new trial under state law because the federal court was wrong to find that that same evidence was material enough to constitute a *Brady* violation. [7/] Such a decision is too infected with error to be allowed to stand.

(Continued)

> have been the wife's apparent disaffection, in each a stabbing and in each a suggestion of witness intimidation.

(Appendix D at 7d-8d.) The federal district court added:

> The record also reveals that Monroe's mother testified that on the day of the murder Stinson came by the Collins' house and tried to see his ex-common law wife. After he was told that she was not at home he said that he would come back that evening. This evidence makes the assertion that Stinson committed the murder plausible.

(Appendix C at 4c-5c)

[7/] Even if the proper standard were the state standard governing new trial motions based on newly discovered evidence -- which it is not -- the state court would still have to determine whether evidence which is material enough to create a reasonable doubt as to guilt which did not previously exist, as found by the federal courts, is also material enough to probably change the verdict. But the Louisiana courts never addressed this issue. In fact, the federal courts' findings of fact -- which only need to show a reasonable doubt as to guilt which did not previously exist -- are so strong that it might well be that they even collaterally estop the state from not finding that the new evidence would have probably changed the verdict.

Allowing the state court decision below to stand would be unjust. The state had a full and fair opportunity to litigate issues of law and fact before the federal court. It lost. It did not appeal from the adverse portions of the federal decision. Now, petitioner is entitled to protection "from the burden of relitigating an identical issue with the same party. . . ." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979). *See also, Montana v. United States*, 440 U.S. 147, 153–154 (1979) (collateral estoppel "protects . . . adversaries from the expense and vexation attending multiple lawsuits. . . .").

Allowing the state court decision below to stand would also be unwise. "Judicial efficiency demands that there be an end to litigation at some point." *Gelb v. Royal Globe Insurance Company*, 798 F.2d 38, 44 (2d Cir. 1986). If upheld, the state court decision would promote judicial nonuniformity -- by allowing state courts to pay no deference at all to their federal counterparts. But collateral estoppel "fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*,

440 U.S. at 153–154 (1979). *See also, Allen v. McCurry*, 449 U.S. 90, 94 (1980).

This court should grant certiorari in order to secure uniform national implementation of the *Limbach* rule. By granting certiorari here, this Court -- whose holdings clearly bind the state court in the first instance -- can clearly establish a national rule of law for all states to follow. 8/

8/ This Court should also grant certiorari to resolve a conflict between a federal court and the highest state court issuing an order. *See* Supreme Court Rule 17; *Lakeside v. Oregon*, 435 U.S. 333, 336, 336 n.3 (1978); *Baldwin v. Alabama*, 472 U.S. 372, 374 (1985).

II

THIS COURT SHOULD GRANT THE WRIT TO RESOLVE THE ISSUE OF WHAT REMEDY A STATE MUST GRANT FOR A POST-CONVICTION SUPPRESSION OF MATERIAL EXCULPATORY EVIDENCE

In this case, the federal court found a violation of petitioner's rights under *Brady v. Maryland* and then remanded petitioner to state court for a constitutionally appropriate remedy. The precise issue presented by these circumstances has never been addressed by this Court: when a federal court issues a writ of habeas corpus because of the State's post-conviction suppression of material, exculpatory evidence in violation of a petitioner's *Brady* rights and remands petitioner to state court to request post-conviction relief which comports with his constitutional rights, are the state courts required to grant petitioner a new trial or release him -- until now the invariable remedy for prosecutorial suppression of material exculpatory evidence?

The answer must be that, confronted with a *Brady* violation, the state court is required to order a new trial and is not allowed to reconsider the evidence under state law standards for a new trial. In all other cases, the invariable remedy for a *Brady* violation has been a new trial. Petitioner has not found a single case in which a new trial has not been granted in a similar circumstance, nor has the State, in all the proceedings below, cited to any such case. But for one fact -- the post-conviction setting of the illegal suppression -- it would be absolutely clear that the state court was required to grant petitioner a new trial or release him.

But the fact that the evidence was suppressed after, rather than before or during trial, does not lessen the fundamental unfairness to Monroe inherent in such suppression, diminish

the State's duty to disclose such material, or alter the federal court's finding that Monroe may be innocent. The *Brady* principle is bottomed on the fundamental unfairness of prosecutorial suppression of exculpatory evidence, see *United States v. Agurs*, 427 U.S. 97, 110-111 (1976). Accordingly, to effectuate the *Brady* rule, this Court has fashioned a federal constitutional standard for determining when a defendant is entitled to a new trial after prosecutorial suppression of exculpatory evidence. Thus, this Court has drawn a sharp distinction between newly-discovered evidence suppressed by the State and newly-discovered evidence obtained from a neutral source:

> If the standard applied to the usual motion for a new trial based on newly discovered evidence were the same when the evidence was in the State's possession as when it was found in a neutral source, there would be no special significance to the prosecution's obligation to serve the cause of justice.

Agurs, 427 U.S. at 111. That rationale applies just as strongly to a post-conviction suppression as to any other *Brady* violation.

This issue is of extraordinary public importance. If, in a post-conviction setting, a state court may reevaluate the evidence by state law standards as in a state court motion for a new trial, instead of the *Brady-Agurs* federal constitutional standard, the prosecution has no incentive to uphold its obligations in the post-conviction setting. *Agurs*, 427 U.S. at 111 (1976). In fact, the ruling actually encourages the prosecutor to suppress exculpatory evidence. If the suppression succeeds, the conviction and sentence -- perhaps a death sentence -- will stand. If the suppression fails, the prosecutor is no worse off -- a defendant is left with the same remedy he would have had if the state had not suppressed.

Clearly, state courts must apply the *Brady-Agurs* standard in order to discourage prosecutorial misconduct after trial, just as it discourages prosecutorial misconduct before and during trial. The sovereign's "overwhelming interest that justice shall be done," *Agurs*, 427 U.S. at, 111, does not end with the trial. *In re Wright*, 282 F. Supp. 999 (W.D. Ark. 1968) (granting new trial on basis of prosecutor's post-trial suppression of exculpatory evidence).

In fact, after trial, when a defendant's rights may no longer be vigilantly protected by watchful defense counsel in the adversary process, the burden on the state to ensure that justice be done is even greater. The Court should grant certiorari and hold that state courts must grant a new trial because the *Brady-Agurs* rule applies at whatever stage of the legal process the unlawful suppression of evidence occurs. [9]/

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[9]/ In fact, in granting the writ of certionari here, this Court might consider as "fairly subsumed" within its grant of the writ the issue presented in petitioner's earlier petition for certiorari: whether the invariability of the new trial remedy for a Brady violation required the federal court to grant a new trial and not a remand to state court for his remedy. In remanding petitioner to state court, the district court fashioned a unique -- and unworkable -- remedy for a *Brady* violation. Now that petitioner has been back to the state courts, the flaw in the district court's approach is readily apparent. The state court took the district court's remand as an opportunity to issue a ruling utterly at odds with prior federal ruling. The result is exactly what the district court hoped to avoid -- inconsistent rulings that strain the desired harmonious relations between state and federal courts.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: December 21, 1987

Respectfully submitted,

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APPENDICES

APPENDIX A

STATE OF LOUISIANA	CASE NO. 261-647 "F"
VERSUS	CRIMINAL DISTRICT
COURT	
RONALD MONROE	PARISH OF ORLEANS

RULING

This matter came before this Court on a hearing on a motion for a new trial, as ordered by the United States District Court for the Eastern District of Louisiana, affirmed by the Fifth Circuit Court of Appeals, *Monroe v. Blackburn*, 749 F. 2d 958 (5th Cir. 1984), cert. denied, ___U.S. ___106 S. Ct. 2261, ___L.Ed.2d ___(1986). This Court has reviewed the entire record of this case, including the transcript of Ronald Monroe's trial for first degree murder on January 22, 1980, as well as the transcripts of all proceedings held in connection with applicant's habeas corpus application in federal court, along with the jurisprudence this Court appreciates to apply to this matter. With this review in mind this Court denies Monroe's motion for a new trial under Code of Criminal Procedure Article 851 (3) for the following reasons.

This Court does not find that the evidence relied on by this applicant involves any interest defined by *Brady v. Maryland* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). This evidence, a purported "confession" by George Stinson to his Michigan cellmate, did not even exist at the time Monroe was tried for the first-degree murder of Lenora Collins in January, 1980. Indeed, it cannot be disputed that this allegedly incriminating evidence came to exist at least six months after Monroe was tried and convicted of Ms. Collins' murder. As a

result it is impossible to accuse the prosecution of "suppressing" this material since it did not exist at the time of trial and therefore could not have been suppressed. Neither does this Court find that the Louisiana Supreme Court case of *State v. Johnson*, 464 So.2d 1363 (La.1985), has any application to the instant case. *Johnson* involved the prosecution's failure to turn over to the defendant in a rape case the victim's panties which were negative for the presence of semen, despite a pre-trial request by defendant to turn over any exculpatory evidence, including tangible objects favorable to the accused. After this evidence was discovered by the defendant, post-trial, the trial court utilized the standard set out in La. C. Cr.P. Art. 851 (3) regarding newly discovered evidence in analyzing the evidence's impact, instead of the proper *Brady* standard. Our Supreme Court remanded the case so that the correct legal standard be used to assess the withheld material's impact. The important distinguishing element in Johnson is that the evidence at issue there existed *before trial*, therefore the State was duty-bound under *Brady* to disclose it. In the instant case this Court holds that the Stinson statement cannot be deemed Brady material because it *did not even exist* at the time of Monroe's trial. Thus, the applicant's due process right to a fair trial was not implicated in any way. Therefore, the disputed material here must be evaluated under the newly discovered evidence standard of La.C.Cr.P. Art. 851 (3) and not under the rule of *Brady v. Maryland*.

This Court is required to grant a new trial whenever new and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed

the verdict of guilty. La.C.Cr.P. Art. 851 (3); *State v. Robicheaux*, 412 So.2d 1313 (La. 1982). This Court finds that, as a matter of fact, the Stinson statement does not rise to the level whereby the jury's guilty verdict would probably have changed, had the jury been exposed to that evidence. The Court holds that the ambiguous utterance by Stinson that Ms. Collins died in a manner similar to the demise of Erma Jean Lofton, Stinson's common-law wife in Michigan, was merely an observation that both women coincidentally died as a result of being stabbed. I do not find that Stinson meant that he murdered both victims. In view of the overwhelming, eyewitness evidence of Monroe's murder of Ms. Collins, provided by the victim's two children who were adolescents at the time of the killing and competent witnesses at trial, this Court cannot be persuaded that the off-hand remark made by Stinson to McWilliams would have injected a doubt in the jury's mind such that their verdict would probably have been different. In addition, this Court finds no evidence in this record that Ms. Collins was in the process of separating herself from Stinson at the time of her death. In fact, the record is clear to me that Stinson and Lenora Collins separated months before her death and that there existed no animosity between the two, such as existed between the defendant, his family and the victim and her family, such that Stinson would have been motivated to kill Ms. Collins. The Court also finds that Stinson's alleged murder of Ms. Lofton in Detroit, obviously occurring long after the death of Ms. Collins, is irrelevant to the present case and the Court, therefore, fails to see its significance.

This Court wishes to make clear for the record that both the applicant and respondent were given every opportunity to subpoena any witnesses they wished to testify at the hearing.

Both sides agreed to submit the matter on the available testimony in record, with the exception of the calling of Theodise Collins, Lenora Collins' daughter and an eyewitness to the murder who was herself stabbed by Ronald Monroe, to testify for the respondent State of Louisiana. Ms. Collins once again swore that it was applicant Monroe, and not Stinson, who killed her mother and stabbed her. She further said that no one, specifically Stinson, intimidated her into falsely accusing Monroe of the murder.

For all of these reasons, the defendant's motion for new trial on the merits and/or a new penalty hearing is denied.

New Orleans, Louisiana, this 2nd day of February, 1987.

/s/ DENNIS J. WALDRON, JUDGE
CRIMINAL DISTRICT COURT
SECTION F
PARISH OF ORLEANS

APPENDIX B

THE SUPREME COURT OF THE STATE OF LOUISIANA

STATE EX REL RONALD S. MONROE

VS.
NO. 87-KP-0574

FRANK BLACKBURN, WARDEN
LOUISIANA STATE PENITENTIARY

- - - - - -

IN RE: Monroe, Ronald S.; Applying for Supervisory Writs; Parish of Orleans Criminal District Court Div. "F" Number 261-647

- - - - - -

September 21, 1987
Denied.

HTL
JAD
WFM
JCW
LFC

CALOGERO & DENNIS, JJ., would grant the writ.

Supreme Court of Louisiana
September 21, 1987

/s/ Deputy Clerk of Court
For the Court

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RONALD S. MONROE	*CIVIL ACTION
VERSUS	*NO. 83-6277
ROSS MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY, ANGOLA, ET AL	*SECTION "F" (5)

MEMORANDUM OPINION

This matter came before the Court on the Petition of Ronald S. Monroe for a Writ of Habeas Corpus, and was referred to United States Magistrate Livaudais for an evidentiary hearing. 28 U.S.C. 636 (b)(1)(B). Pursuant to the Court's order the Magistrate held an evidentiary hearing and issued findings and recommendations.

On February 14, 1984 the respondents filed objections to the Magistrate's findings and recommendations. When objections to a Magistrate's report are filed the Court is required to make de novo findings as to all portions of the report that are subject to an objection. 28 U.S.C. 636(b)(1)( ). After carefully considering the transcript of the evidentiary hearing as well as all supporting documents in light of the respondents' objections, the Court believes that the Magistrate's findings and recommendations are without error, and the Court adopts the Magistrate's report as its own findings and conclusions. In compliance with the mandate of 28 U.S.C. 636 (b)(1)(c) the Court is issuing this Memorandum Opinion in order to address the respondents' objections to the report.

The respondents first complain about the Magistrate's conclusion that the petitioner's complaint does not raise a claim that is cognizable under the theory of *Brady v. Maryland* 373 U.S. 83 (1964) and its progeny. In this regard they raise three objections.

First, they contend that petitioner's claim is nothing more than a request for a new trial based on newly discovered evidence. This contention is clearly in error. The petition, accompanying legal memoranda and the issues raised at the evidentiary hearing clearly indicate that petitioner bases his request for relief in Federal court on the fact that during the post-conviction relief period the State possessed exculpatory evidence and failed to turn it over the the defendant. Such a claim is cognizable under *Brady*.

Second, the respondents contend that the State is under not duty to give a defendant exculpatory evidence which was obtained after the defendant was convicted. In granting petitioner's request for a stay of execution, the Court held that the duty to disclose exculpatory material continues beyond the trial of a criminal case up to and including the time that an accused may apply for a new trial. *In re Petition of Larry James Wright*, 282 F.Supp. 999 (W.D. Ark. 1968). The State points to the fact that the Court in *Wright* failed to cite *Brady* and argues that this case does not impose a continuing obligation under *Brady*, to disclose exculpatory evidence. This argument exalts form over substance and is without merit. The *Brady* cases stand for the proposition that due process is denied because the trial is fundamentally unfair when the prosecution fails to give the defendant exculpatory evidence that is material to an accused's guilt or innocence. These cases turn on the belief that society benefits when our system of criminal

justice is fair, and rejects the sporting notion of justice. These same concerns were expressed by the court in *Wright*. In that case Judge Miller held that it was unfair and a violation of due process for a prosecutor to withhold exculpatory evidence which was acquired while the accused could file a motion for a new trial. The analysis used in *Wright* closely parallels the reasoning applied in *Brady*. It supports this Court's holding that it is fundamentally unfair and contrary to society's notions of justice for a prosecutor to withhold material exculpatory evidence which he acquires while the defendant is entitled to file a motion for a new trial. *Wright* did not cite *Brady*, but it clearly adopted *Brady's* mandate and purpose.

Third, the respondents contend that *Wright* is distinguishable because the facts that were in prosecutor's possession were more credible and were more clearly probative than the material held by the police authorities in New Orleans. This objection goes to the standard of materiality will be examined in this opinion.

The respondents complain that the information given to the New Orleans police is based on hearsay and rumor and is, therefore, not credible.

To the extent that this complaint goes to the admissibility of the *Brady* material, this contention is irrelevant. *Sellers v. Estelle*, 651 F.2d 1074 (1981) *cert. den.* 102 S.Ct. 1292. The assertion that the information that was given to the New Orleans Police Department was not credible and does not rise to the level of *Brady* material is without merit. This argument is undercut by the fact that after Officer Mckenzie received the information from Detective Gallardo he found it sufficiently credible to merit his further investigation. More importantly,

at the evidentiary hearing Stinson admitted making the statement in reference to Lenore Collins' death "... that she was killed the same way Erma Lofton was." Magistrate's Hearing 1/30/84 at 55. Although Stinson attempted to deny that this statement was an admission that he killed Ms. Collins, his former common law wife, this statement could be viewed by a trier of fact as a confession which would by logical necessity exculpate Monroe. *See, Sellers v. Estelle*, 651 F.2d 1074 (5th Cir. 1981); A.B.A. Standards for Criminal Justice 11–21(c). At the least, it is material bearing on the guilt or innocence of petitioner which a State court should be obliged to consider in a request for new trial; material that was heretofore unavailable.

Since there was no allegation that Monroe's attorney made a request for this evidence, the proper standard for determining whether the evidence that was withheld is material is whether it creates a doubt that did not otherwise exist. *United States v. Agurs*, 427 U.S. 97 (1976); *Canon v. State of Alabama*, 558 F.2d 1211 (5th Cir. 1977). To make this evaluation the Court has carefully examined the trial transcript from Monroe's second trial. *United States v. Anderson*, 574 F.2d 1347 (5th Cir. 1978); *Cannon*, supra. This new evidence creates a reasonable doubt that did not otherwise exist. The Court's reading of the record reveals there was no sign of a forced entry into the Collins home. This, coupled with the fact that no murder weapon or blood stained clothing or rags were found at or around Monroe's home, indicate that Monroe may not have committed the murder. The record also reveals that Monroe's mother testified that on the day of the murder Stinson came by the Collins home and tried to see his ex-common law wife. After he was told that she was not at home he

said that he would come back that evening. This evidence makes the assertion that Stinson committed the murder plausible.

The only evidence that directly linked Monroe to the murder was the eyewitness testimony of the victim's two children. Although this testimony would seem to clearly establish Monroe's guilt, the Court is disturbed by many aspects of their testimony. First, the Court believes that it is most curious that Joseph Collins ran into the Monroe household to seek assistance when Monroe was, allegedly, in the process of murdering his mother. Second, Detective Gallardo's testimony, at the evidentiary concerning the facts surrounding the allegation that Stinson intimidated witnesses in Michigan as well as the Bridges testimony concerning the possibility that the children may have been coerced, supports the Court's concern that the children's testimony should be weighed against the exculpatory evidence by a State court. 1/ This is not to say that a trier of fact might not conclude that the children's testimony is credible. The Court expresses no opinion on this matter. The Court is, however, faced with the task of evaluating the record to determine the possible effect that the evidence that was withheld might have upon a trier of fact.

In light of the Court's careful evaluation of the record, the fact that Stinson made a statement that could be reasonably construed as a confession leads this Court to find that this evidence creates a reasonable doubt as to Monroe's guilt that did not previously exist. The Court was, therefore, obliged to

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1/ For reasons best known to respondents, the Collins children were not called to testify at the evidentiary hearing before the Magistrate.

issue the Writ of Habeas Corpus on the ground that Monroe's due process *Brady* rights were violated. *Austin v. McKaskle*, No. 82-1418 slip op. (5th Cir. Feb. 3, 1984).

In reviewing the record from Monroe's post conviction motion before the Criminal District Court for the Parish of Orleans the Court finds, contrary to respondent's assertion, that the trial court denied Monroe the opportunity to effectively raise the claim that his *Brady* rights were violated. Respondent admits at this hearing that Monroe was unable to present the exhibits to the trial court which were produced at the evidentiary hearing held by the United States Magistrate. Monroe was also unable to introduce in the trial court the testimony elicited at the evidentiary hearing.

Since the evidence came into the possession of the authorities in New Orleans after Monroe's conviction but before the expiration of the time that a motion for a new trial based on newly discovered evidence could have been filed, this Court finds that the taint caused by the State's violation of Monroe's *Brady* rights unconstitutionally impaired his right to file a motion for a new trial or obtain post conviction relief. Since the Court is obliged to fashion a remedy that disposes of the claim so as to do what justice and the law require, 28 U.S.C. 2245, the Court is empowered to fashion a remedy that redresses the deprivation Monroe actually suffered. Thus, the Court entered an order which requires the State to provide to Monroe whatever he was entitled to by way of post-conviction relief during the limitation period provided by Louisiana law for a request for a new trial based on newly discovered evidence, *c.f. Dowd v. United States*, 340 U.S. 206 (1955).

This Court expresses no opinion regarding the guilt or innocence of Monroe. Our obligation is to decide whether any aspect of the State court criminal proceeding was constitutionally defective, if the State court fails to do so. The issue has now been decided. The period during which Monroe could request a new trial was tainted with constitutional infirmity because material exculpatory matter bearing on Monroe's guilt or innocence was suppressed.

It is now the obligation and duty of the State court to grant Monroe post-conviction relief rights that comport with his constitutional rights.

New Orleans, Louisiana, this 28th day of February, 1984.

/s/ MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RONALD S. MONROE	*CIVIL ACTION
VERSUS	*NO. 83-6277
ROSS MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY, ANGOLA	*SECTION "F"(5)

ORDER

The Court having reviewed the Findings and Conclusions of Magistrate Livaudais, the transcript of hearing held on January 30, 1984 and the exhibits received, and after considering Respondent's Objection to Magistrate's Findings and Conclusions, accepts the Magistrate's Findings and Conclusions and finds that Petitioner's due process rights during the post-conviction relief period following his trial were unconstitutionally deprived because material exculpatory matter bearing directly on his guilt or innocence was suppressed by the local prosecuting authority after his conviction in violation of the United States Supreme Court decision in *Brady v. Maryland*, 373 U.S. 83 (1964).

Now that this Court has determined the Federal constitutional question the State courts of Louisiana should find it possible to provide the post-conviction review to which Petitioner is entitled. Therefore,

IT IS ORDERED:

That the Petition of Ronald S. Monroe for a Writ of Habeas Corpus is granted; and

IT IS FURTHER ORDERED:

That Petitioner's date of execution is postponed and the

State of Louisiana is directed to grant to Petitioner whatever he was entitled to by way of post-conviction relief during the limitation period provided by Louisiana law for a request for a new trial based upon the exculpatory material which the State courts did not have an opportunity to consider, so that Petitioner may fully and effectively exercise and exhaust his post-conviction relief rights under Louisiana law.

Written reasons will follow shortly. New Orleans, Louisiana, this 15th day of February, 1984.

/s/ Martin L.C. Feldman
United Sates District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RONALD S. MOORE	CIVIL ACTION
versus	No. 83-6277
ROSS MAGGIO,	
Warden, ET AL	SECTION: F/5

FINDINGS AND CONCLUSIONS

Petitioner, Ronald S. Monroe, is a state prisoner presently incarcerated in the Louisiana State Penitentiary at Angola, Louisiana. He was convicted of first degree murder of Lenora Collins on January 26, 1978 and on that same date the jury recommended the death sentence. The Supreme Court of Louisiana reversed the conviction and sentence on December 15, 1978. *State v. Monroe*, 366 So.2d 1345 (La. 1978). On January 23, 1980 petitioner was retried on the same charge, convicted, and again the jury recommended the death penalty. The court sentenced petitioner on February 6, 1980 to death by electrocution. The Louisiana Supreme Court affirmed the conviction and sentence on April 6, 1981. *State v. Monroe*, 397 So.2d 1258 (La. 1981), *rehearing denied*.

Petitioner's execution was scheduled for January 5, 1984 at 12:01 a.m. He applied to this Court for a writ of habeas corpus and for post-conviction relief pursuant to 28 U.S.C. § 2254 on December 30, 1983. Previously, petitioner sought post-conviction relief, a new trial and a stay of execution in the Criminal District Court, Parish of Orleans. On December 29, 1983 the request for the stay was denied. The request for a new trial, and for a stay of execution was denied on January

3, 1984 by the Criminal District Court in Orleans Parish. This Court denied petitioner's application for a stay of execution on January 3, 1984. The Louisiana Supreme Court denied petitioner's application for post- conviction relief and for a stay of execution on January 3, 1984. The Louisiana Supreme Court denied petitioner's application for post-conviction relief and for a stay of execution on January 3, 1984. *Monroe v. Maggio,* ___ So.2d ___, No. 83-KP-2651 (La. January 3, 1984). Thus, petitioner has exhausted his state remedies. *Minor v. Lucas,* 697 F.2d 697 (5th Cir. 1983); *Rose v. Lundy,* 455 U.S. 509, 102 S.Ct. 1198 (1982).

The matter was heard on January 4, 1984 and this courtconsidered several grounds alleged by petitioner in support of his application for a stay and for post-conviction relief. The Court granted the petitioner's stay until February 7, 1984 on the basis of ground two of petitioner's application to permit an evidentiary hearing to review the validity of petitioner's claim of a denial of due process. The Court specifically found that all other grounds of petitioner's application lacked merit. (Record Document 12 at 14).

An evidentiary hearing was held on January 30, 1984 to consider the merits of the second ground alleged in this petition for habeas corpus. (Record Document 1 at 7). Ground two raises the issue of whether petitioner's Sixth Amendment rights were violated by the State's suppression of evidence which was allegedly exculpatory in nature and which could have indicated that petitioner is not guilty of the crime for which he was convicted and sentenced to death. The petitioner argues that he was denied due process of law under *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194 (1964) because the State failed to relay to defense counsel the fact that a Michi-

gan police detective informed the New Orleans Police Department of the possible confession of another man to the crime for which petitioner has been convicted.

The prosecution's suppression of evidence when it has been requested by the accused, if the evidence is favorable to him and is material to his guilt or his punishment, violates due process whether or not the prosecution is in good faith or bad faith. *Brady,* 83 S.Ct. at 1196-1197. If the defendant makes a general request for all exculpatory evidence or makes no request at all for evidence, the prosecutor violates his constitutional duty to disclose if "his omission is of sufficient significance to result in the denial of defendant's right to a fair trial." *United States v. Agurs,* 427 U.S. 97, 108, 96 S.Ct. 2392, 2400 (1976).

The prosecution is not required to supply the defense with "a complete and detailed accounting ... of all police investigatory work on a case." *Moore v. Illinois,* 408 U.S. 786, 795, 92 S.Ct. 2562, 2568 (1972). Undisclosed evidence is not material if it is only possible that it might have helped the defense or affected the outcome of the trial. *Agurs,* S.Ct. at 2400. Omitted evidence is material and its suppression violates due process if it creates a reasonable doubt that did not otherwise exist when it is considered in light of the entire record. *Id.* at 2402. If reasonable doubt about defendant's guilt does not exist with or without evaluation of the omitted evidence, a new trial should not be granted. However, if the additional evidence, even if it is of relatively minor importance, creates a reasonable doubt, the evidence is material and the prosecution's suppression of it amounts to constitutional error. *Id.*; *Sellers v. Estelle,* 651 F.2d 1074 (5th Cir. 1981).

Further, the fact that the prosecuting attorney is not shown to have knowledge of the exculpatory evidence does not neutralize the nondisclosure. "Failure of the police to reveal such material evidence in their possession is equally harmful to a defendant whether the information is purposely, or negligently, withheld." The police department is part of the prosecution; the state has the duty to disclose and the fact that the police had not informed the prosecuting attorney does not excuse the nondisclosure of material exculpatory evidence under *Brady*. *Barbee v. Warden Maryland Penitentiary*, 331 F.2d 842, 846 (5th Cir. 1964).

The State must prove the defendant's guilt beyond a reasonable doubt in order to convict him. *Jackson v. Virginia*, 443 U.S. 307, 309 (1979). In order to determine if the "omitted evidence creates a reasonable doubt that did not otherwise exist," the court must "evaluate all the evidence as it would bear on the deliberations of a factfinder." *Cannon v. State of Alabama*, 558, F.2d 1211, 1213-1214 (5th Cir. 1977). *See Agurs*, 427 U.S. 112, 96 S.Ct. at 2401.

As aforesaid, petitioner was convicted in January, 1980. In Louisiana a motion for a new trial based on discovery of new and material evidence may be filed within one year after verdict. LSA-C.Cr.P. Art. 851(3), 853. Evidence adduced at the hearing before the undersigned established that in July, 1980, Detective Joseph W. Gallardo of the Pontiac, Michigan Police Department contacted the New Orleans Police Department and told them that in the course of inves tigating one George Stinson's murder of his common-law wife in Michigan, he had received information that Stinson may have also murdered his previous wife, Lenora Collins, three years earlier in New Orleans. On September 23, 1980, he again tele-

phoned the New Orleans Police Department and spoke to Sergeant John McKenzie, platoon commander of the homicide division of the New Orleans Police Department. Gallardo told McKenzie of a tape recorded interview (Plaintiff Exhibit 2) he had had with Francis Lee McWilliams, 1/ Stinson's cellmate in the Oakland County Jail, where Stinson had been incarcerated after his arrest for Lofton's murder.

During the interview, McWilliams related several conversations he had had with Stinson, during which Stinson first confessed to stabbing Lofton, and then stated that "the same thing happened" to his first wife -- Leonora Collins.

Detective Gallardo also reported information he had received that Stinson had threatened Collins' two children -- Joseph and Theodise 2/ -- into identifying Monroe as their mother's killer.

Sergeant McKenzie scribbled notes of his conversation with Gallardo, and then after verifying the existence of a New Orleans case file wrote a three page summary in more legible and chronological order. (Defendant Exhibit 1, testimony of McKenzie, at 12, 13). Petitioner contends that this three page summary made on September 23, 1980 (Plaintiff Exhibit 5) constituted Brady material which was not made available to him until produced earlier in these proceedings. Sergeant McKenzie explained that the top and center portions of page

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1/ McWilliams had been transported to New Orleans to testify at the hearing but was not called by either party.

2/ The eyewitnesses then aged fourteen and thirteen respectively who testified at the New Orleans trial.

one of the summary was information he gleaned from the New Orleans case file, the bottom portion of page one and all of page two was information given him by Detective Gallardo and that page three constituted notes of his follow up after the telephone call. (Defendant Exhibit 1 at 18). He placed the information in the pigeonhole mailbox of the detectives in charge of the case. (Defendant Exhibit 1 at 52–53). The detectives did not recall receiving the information. The summary was located in the case file and produced by counsel for respondent upon discovery request in this habeas proceeding. This was petitioner's first access to it.

This summary states in pertinent part:

> "While in jail Stinson got to bragging about how he had murdered wife in Michigan to cellmate.
>
> Stinson also bragged that he had killed his first wife in New Orleans on 9–10–77 and threatened his step-children into identifying neighbor as killer.
>
> . . . Det. Gallardo also got information from a second source that Stinson had killed New Orleans wife Collins." (Plaintiff Exhibit 5 at 2).

It is undisputed that State authorities suppressed the evidence concerning George Stinson that they received from Detective Gallardo. Respondent has admitted that neither Ronald Monroe, his attorney, nor anyone acting on Monroe's behalf was ever informed by anyone acting on behalf of the State of any of this information. There was no showing that this non-disclosure was willful or malicious. For some unexplained reason the information never got to the attention of the prosecutor. This fact that the District Attorney's office may not

have known of the information communicated by Detective Gallardo to the Police Department is immaterial. The obligation to disclose attaches whenever the police in the prosecuting jurisdiction possess exculpatory evidence. *United States v. Agurs* 427 U.S. 97, 110 (1976); *Giglio v. United States*, 405 U.S. 150, 154 (1972); *Freeman v. Georgia*, 599 F.2d 65, 69 (5th Cir. 1979), *cert. denied*, 444 U.S. 1013 (198).

The second element of proof in establishing a Brady violation is that the suppressed evidence is favorable to the defendant. It is hard to imagine evidence more potentially favorable to a defendant than the possibility of another person's confession to the crime for which he has been convicted coupled with a suggestion of a second source of information in support. Stinson's denial that he confessed the New Orleans murder to his cellmate in Michigan does not, of itself, render the evidence unfavorable. His Michigan attorney protected his interests and secured a grant of immunity from prosecution for the New Orleans murder. (Stinson Exhibit 1). Nonetheless, a confession at this time under these circumstances might adversely effect whatever Michigan release from custody rights he enjoys. His Michigan sentence was confinement for a minimum term of ten years, a maximum of twenty–five. (Plaintiff Exhibit 8).

The final element, materiality of the suppressed evidence is also established. The suppressed material (Plaintiff Exhibit 5) enhanced by the evidence adduced at the hearing sufficiently creates a reasonable doubt that did not otherwise exist. A parallelism between the Michigan and New Orleans murders was shown. In each Stinson was the husband, in each a possible motive may have been the wife's apparent disaffection, in each a stabbing and in each a suggestion of witness

intimidation. The State trial judge did not have the advantage of having this evidence produced to him some seven months after trial when it surfaced. Some three years after trial a different State judge heard petitioner's post-conviction claims, but even then did not have the text of the suppressed evidence (Plaintiff Exhibit 5), rather only a suggestion concerning the Michigan information. A reasonable doubt has been shown to now exist, when had not formerly, evaluated in the context of the entire record.

Petitioner has satisfied *Brady – Argus* criteria. His ground two of this petition for a writ of habeas corpus is meritorious. It is, accordingly, RECOMMENDED that a writ of habeas corpus be GRANTED and that the Court issue whatever order(s) be deemed appropriate.

New Orleans, Louisiana, February 2, 1984.

/s/ MARCEL LIVAUDAIS, JR.
United States Magistrate